SERVED: May 5, 1993

NTSB Order No. EA-3879

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of May, 1993

JOSEPH M. DEL BALZO, Acting Administrator, Federal Aviation Administration, Complainant, v. JOHN A. DILAVORE, Respondent.	Docket SE-13004

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman rendered in this proceeding on April 5, 1993, at the conclusion of a four-day evidentiary hearing.[1] By that decision the law judge affirmed an emergency order of the Administrator revoking respondent's Airframe and Powerplant Mechanic Certificate (No. 128449563) with

[1]An excerpt from the hearing transcript containing the initial decision is attached.

Inspection Authorization for his alleged violations of sections 43.13(a) and 43.15(a)(1) of the Federal Aviation Regulations, "FAR," 14 CFR Part 43.[2] As we find no merit in any of respondent's contentions on appeal, for the reasons discussed below, his appeal will be denied.

The February 26, 1993 emergency order, as amended on March 5, alleges that respondent returned to service two aircraft that were not airworthy.[3] According to the order, this was so because, notwithstanding respondent's recorded performance of annual inspections on the two aircraft, they each exhibited some

[2]FAR sections 43.13(a) and 43.15(a)(1) provide as follows:

"§43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

"§43.15 Additional performance rules for inspections.

(a) General. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall--

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements...."

[3]A copy of the emergency order, which served as the complaint, is attached.

32 discrepancies.[4] On appeal, the respondent does not challenge the judgment of the FAA inspectors and the other expert witnesses who testified at the hearing that the aircraft were unairworthy when they inspected them. Instead, respondent argues that the discrepancies observed by the inspectors and others were not present when he performed the annual inspections. The law judge, we think, had abundant evidence on which to conclude otherwise.

One of the two aircraft, a Cessna 310, was inspected by the FAA just five weeks after respondent had returned it to service, and it had been flown less than 7 hours in that period. The other aircraft, a Cessna 172-M, had been flown only 13.6 hours in the 12 days between respondent's signoff and the FAA's inspection, which had been prompted by that aircraft's forced landing because of engine trouble some four days earlier. In the opinion of the FAA inspectors and other mechanics called by the Administrator, the maintenance deficiencies they observed were not attributable to wear and tear occurring after the respondent's signoffs or to any other intervening factor respondent suggested might have caused them, such as the forced landing on a beach and the subsequent, resulting efforts to remove the aircraft to a repair facility. The law judge's acceptance of their testimony in this connection represents a rejection, as a matter of credibility, of the respondent's

[4]The order further alleged, in effect, that as a result of respondent's deficient maintenance, one of the two aircraft experienced an engine power loss necessitating an emergency landing.

testimony that the aircraft did not exhibit the discrepancies when he returned them to service.[5] It also reflects the law judge's determination that the expert opinion of the Administrator's witnesses was entitled to more weight than respondent's opinion that the discrepancies could have developed after his signoffs.

The respondent's brief on appeal provides no justification for disturbing the law judge's resolution of the conflicting evidence as to the condition of the two aircraft when they were entrusted to respondent for annual inspections. Indeed, respondent's challenge to the sufficiency of the evidence represents, for the most part, a disagreement with the law judge's decision to credit the nonpercipient testimony of the Administrator's expert witnesses over his direct testimony as to the actual condition of the two aircraft when he inspected them.[6]

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[5]On cross examination, these inspectors conceded that it was possible that a few of the numerous discrepancies could have resulted from operations of the aircraft after respondent released them. They remained of the view, however, that all of the listed discrepancies likely existed on the dates given for respondent's annuals.

[6]Respondent argues at length that there are many reasons for questioning the Administrator's witnesses' view that the engine problem that led to the forced landing was caused by a failed throttle cable whose deteriorated condition should have been detected by respondent during an annual inspection. Although we think the evidence was sufficient to support a conclusion that the cable was the source of the engine problem, we do not think the Administrator had to prove that it was in order to establish that the aircraft was not airworthy when respondent certified that it was. Given the testimony that the condition of the cable was such that it should have been replaced in the course of a competent annual inspection, it is not especially relevant to the proof of the charges against respondent whether a cable that posed an unacceptable risk of failure did, in fact, fail.

His objection is not well taken, for we have long recognized the necessity, in a case of this kind, for the Administrator to rely on circumstantial evidence to prove that discrepancies discovered after an annual inspection had been completed existed and should have been corrected at the time it was performed. See Administrator v. Smoligan, 1 NTSB 786 (1969). The inevitable price for the trust placed in those who inspect without supervision is after-the-fact review.

Respondent also argues that revocation is too severe a sanction for the violations the law judge sustained. We do not agree. The numerous discrepancies found in two unsafe aircraft respondent had recently released as airworthy demonstrate that he either did not in fact appreciate the deficiencies in conditions in the aircraft he looked at, which would raise a genuine concern over his technical competence, or he did not look at the aircraft with the thoroughness and care demanded of an inspection authorization holder, a possibility which, at the very least, would place in issue his non-technical qualifications. In either case, a mechanic who returns to service even one aircraft that is so clearly neither airworthy nor safe to fly is not qualified and should have his authority revoked. See Administrator v. Garrelts, NTSB Order No. EA-3136 (1990).

With regard to the several procedural points raised in the respondent's appeal, none of which has been shown to have prejudiced the respondent, we have reviewed each one and find in them no basis for disturbing the law judge's findings and

conclusions.[7]

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and

2. The initial decision and the amended emergency order of revocation are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

[7]Specifically, we do not agree (1) that the law judge was required to dismiss the Administrator's complaint where, because of weather conditions, the hearing had to be rescheduled and, therefore, could not be held within 7 days after the original notice of hearing (see Section 821.56(a), 49 CFR Part 821); (2) that the law judge erred by refusing to order the Administrator to permit discovery of certain internal FAA memoranda as being privileged work product and deliberative process material; (3) that the law judge abused his discretion by refusing to allow a surprise, reputation witness to testify; or (4) that the law judge, after conducting three days of the hearing in New York City, New York, abused his discretion by reconvening the fourth day of the hearing in Washington, D.C., where the respondent, who had previously indicated he was the only remaining witness to testify in his defense, in fact appeared with his counsel and did testify.